

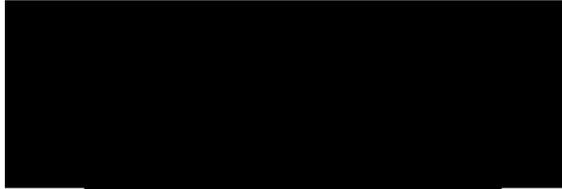
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U.S. Citizenship
and Immigration
Services



LI

FILE

MSC-06-102-15128

Office: LOS ANGELES

Date: FEB 24 2009

IN RE:

Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the applicant testified under oath during her interview with immigration officers on May 28, 1996 that she initially entered the United States in January of 1986. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she did not state that her first entry into the United States was in January of 1986 and that such information resulted from a misunderstanding on the part of the director. She further asserts that she entered the United States in 1981 and informed the immigration officer that she was absent from the United States in 1986. The applicant also asserts that the documentation she has submitted is sufficient to establish her continuous unlawful residence in the United States since before January 1, 1982.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted the current Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on January 9, 2006. The applicant also submitted a previous Form I-687 application dated February 24, 1995 to establish class membership.

The applicant submitted copies of pay stubs from McDonald’s Corporation dated October and November of 1988, however, they cannot be identified as belonging to the applicant because there is no employee name affixed to the documents. The applicant also submitted a copy of an envelope postmarked May 30, 1986, with illegible addresses. Because the addresses are illegible

this document cannot be considered as evidence of the applicant's presence in the United States during the requisite period.

The applicant submitted the following attestations:

- A declaration from [REDACTED] in which he stated that he has known the applicant since February of 1985 and that he met her at his house. The declarant further stated that he resided at [REDACTED] in Montebello, California, and that the applicant was his family's house cleaner and babysitter. The declarant fails to specify the length of the applicant's employment.
- A declaration from [REDACTED] in which he stated that he has known the applicant since December of 1981 and that he met her at his house in Glendale, California. He also stated that he employed the applicant from 1981 to 1985 as his housekeeper and babysitter.

The statements made by the declarants are inconsistent with the applicant's statement made during her May 1996 immigration interview where she stated that she first entered the United States in January of 1986. Although the applicant claims that 1986 was not when she initially entered the United States but was when she was absent from the United States, she stated on her previous Form I-687 application at part #35 that her only absence from the United States was from June 1987 to July 1987. The declaration made by [REDACTED] is inconsistent with the applicant's Form I-687 application at part #33 where she stated that she was self-employed in Los Angeles, California from December 1981 to February 1985. The applicant has failed to submit any objective evidence to explain or justify the inconsistencies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). In addition, the employment declarations do not conform to regulatory standards for attestations by employers. Specifically, the declarations do not specify the address(es) where the applicant resided throughout the claimed employment periods, or whether the applicant was employed full-time or part-time. 8 C.F.R. § 245a.2(d)(3)(i). Here, the declarants fail to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

It is noted that the applicant indicated on her current Form I-687 application at part #30 that she resided at [REDACTED] in Los Angeles, California from December 1981 to February 1985; at [REDACTED] Way in Montebello, California from February 1985 to June 1986; and at [REDACTED] in Los Angeles, California from June 1988 to June 1990. The applicant indicated on her previous Form I-687 application at part #33 that she resided at [REDACTED]

[REDACTED] in Los Angeles, California from August 1988 to March 1992.¹ The applicant has failed to address this inconsistency.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. She has failed to overcome the director's basis for denial. The employment letters do not conform to regulatory standards and the attestations are inconsistent with statements made by the applicant under oath and on her Form I-687 applications.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon evidence that is inconsistent with the applicant's statements, and fail to conform to regulatory standards, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.

¹ The applicant does not list any residence on her previous Form I-687 application before August 1988.